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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,987	06/25/2001	Michael Robert Costello	19133.0132U1	9552

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EXAMINER

VAN BRAMER, JOHN W

ART UNIT	PAPER NUMBER
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3622

MAIL DATE	DELIVERY MODE
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07/24/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/888,987	Applicant(s) COSTELLO ET AL.	
	Examiner John Van Bramer	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16-26 and 28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-26 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>02/07/08</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed on May 7, 2007 cancelled claims 15 and 27. Claims 1, 17, and 23 have been amended and no new claims were added. Thus, the currently pending claims are Claims 1-14, 16-26, and 28.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 – 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fishbein (Carpet Take-Back: EPR American Style, Environmental Quality Management, Autumn 2000, pg 25 – 36).

Claim 1: Fishbein discloses a method for recovering carpet comprising polymeric fibers.

- a. Selling carpet to a consumer. (Page 31, Paragraph 1) (Fishbein discloses that under a capital lease ownership of the carpet is transferred to the lessee which means a sale of the item has taken place. Fishbein also discloses in the cited section that Interface provides this type of lease.) . While Fishbein is silent with regard to installing the carpet at the consumer's location it does disclose purchasing, leasing and maintaining the carpet. It would have been obvious to one of ordinary skill in the art at the time of the invention that the step of installing the carpet is an integral step in the leasing process. Furthermore it would have been obvious to one of ordinary skill in the art at the time of the invention that the carpet would have to be installed in order to perform the step of maintaining the carpet (Page 28, Column 2, lines 13 – 27). One would have been motivated to perform the installation step in order to entice customers to participate in the leasing arrangement.
- b. While Fishbein does not explicitly disclose that a database is established and maintained that contains information regarding installed carpet and consumers it is obvious to one of ordinary skill in the art at the time the invention was made that a database containing the type of carpet, installation date, useful lifetime of the carpet, and consumer identification would have been necessary in order for Interface to maintain, and replace the carpet over the period of the lease, and recycle it at the end of its useful life. (Page 28, Column 2, lines 13 – 27 and Page 30, Column 2, lines 39 – 43) One would have been motivated to do this in order to provide the leasing customer with the services that have been promised.

- c. Additionally Fishbein does not explicitly disclose estimating the useful lifetime of the installed carpet, contacting the consumer, or collecting the carpet within a determined period of time from the end of the estimated useful lifetime of the carpet. However, this would have been inherently necessary in order to replace and recycle the carpet at the end of life when the carpet is provided on a leasing arrangement. (Page 30, Column 2, lines 39 – 43)
- d. Fishbein discloses sorting the collected carpet according to polymeric fiber type. (Page 27, Column 2, lines 1 – 17, and Page 28, Column 1, lines 27 – 39)
- e. Fishbein also discloses converting the polymeric fibers into a recovered polymer composition. (Page 28, Column 1, lines 1 – 11)

Claim 2: Fishbein discloses the method of claim 1 further comprising the subsequent step of forming an article from the recovered polymer composition. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Claim 3: Fishbein discloses the method of claim 1 further comprising the subsequent step of forming polymeric fibers from the recovered polymer composition. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced, in order to produce this carpet new polymeric fibers had to be formed)(Page 28, Column 2, lines 13 – 27)

Claim 4: Fishbein discloses the method of claim 1 further comprising the subsequent step of forming polymeric fibers from the recovered polymer composition and then forming the polymeric fibers into a carpet. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Claim 5: Fishbein discloses the method of claim 1 wherein step of converting the polymeric fibers into a recovered polymer composition comprises depolymerizing at least one type of polymeric fiber into its monomeric components. (Depolymerization was used) (Page 28, Column 2, lines 13 – 27)

Claim 6: Fishbein discloses the method of claim 1 wherein step of converting the polymeric fibers into a recovered polymer composition comprises depolymerizing at least one type of polymeric fiber into its monomeric components and then repolymerizing the monomeric components to form the recovered polymer composition. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced, in order to produce this carpet new polymeric fibers had to be formed)(Page 28, Column 2, lines 13 – 27)

Claim 7: Fishbein discloses the method of claim 6 further comprising the subsequent step of forming an article from the recovered polymer composition. (Post consumer

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commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Claim 8: Fishbein discloses the method of claim 6 further comprising the subsequent step of forming fibers from the recovered polymer composition. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Claim 9: Fishbein discloses the method of claim 6 further comprising the subsequent step of forming fibers from the recovered polymer composition and then forming the fibers into a carpet. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Claim 10: Fishbein discloses the method of claim 1 wherein the converting step comprises depolymerizing a nylon polymeric fiber into its monomeric components. (Post consumer commercial carpet made from the company's nylon 6 fiber is produced)(Page 28, Column 2, lines 13 – 27)

Claim 11: Fishbein discloses the method of claim 1 wherein the converting step comprises depolymerizing a nylon 6 polymeric fiber into its monomeric components. (Post consumer commercial carpet made from the company's nylon 6 fiber is produced)(Page 28, Column 2, lines 13 – 27)

Claims 12, 21 and 25: Fishbein discloses the methods of claim 1, 17 and 23 respectively. While Fishbein is silent with regard to establishing and maintaining a database conducted via a global computer network, Official Notice is taken that the use of distributed databases is old and well known. Many companies, including carpet retailers have used distributed databases to maintain customer records. Carpet One and CarpetMax are two well known examples of national carpet retailers that utilize such databases to communicate between various retail locations. It would have been obvious to one of ordinary skill in the art to utilize a distributed database over a network in order to consolidate customer information. One would have been motivated to do so in order to provide personalized service and maintenance to customers regardless of the retail location at which they decide to visit.

Claims 13 and 22: Fishbein discloses the methods of claim 1 and 17 respectively. While Fishbein is silent with regard to how the customer is contacted in order to maintain and replace the leased carpet (Page 30, Column 2, lines 39 – 43), Official notice it taken that contacting customers by mail, telephone, telefax, and electronic mail are all old and well-known business practices. Therefore, in would have be obvious to one of ordinary skill in the art at the time of the invention to contact the customer via one of these methods. One would have been motivated to do this in order to set up an appointment to replace or maintain the customers carpet.

Claim 14: Fishbein discloses the method of claim 1 further comprising the step after step c) of providing the consumer with a replacement carpet. (Page 30, Column 2, lines 39 – 43)

Claim 16: Fishbein discloses the method of claim 1 further comprising providing the consumer with an incentive to replace the carpet. (The disclosure that “Most of the voluntary take-back programs are not free” indicates that there are a couple of these programs that are free. Since the standard procedure is to charge a customer for the disposal of carpet in a landfill, offering such a take-back service that is free is an economic incentive to the customer) (Page 35, Column 1, lines 33 – 46)

Claim 17: Fishbein discloses a method for recovering carpet comprising polymeric fibers.

- a. Selling carpet to a consumer. (Page 31, Paragraph 1) (Fishbein discloses that under a capital lease ownership of the carpet is transferred to the lessee which means a sale of the item has taken place. Fishbein also discloses in the cited section that Interface provides this type of lease.)
- b. While Fishbein is silent with regard to installing the carpet at the consumer's location it does disclose purchasing, leasing and maintaining the carpet. It would have been obvious to one of ordinary skill in the art at the time of the invention that the step of installing the carpet is an integral step in the leasing process.

Furthermore it would have been obvious to one of ordinary skill in the art at the time of the invention that the carpet would have to be installed in order to perform the step of maintaining the carpet (Page 28, Column 2, lines 13 – 27). One would have been motivated to perform the installation step in order to entice customers to participate in the leasing arrangement.

- c. While Fishbein does not explicitly disclose that a database is established and maintained that contains information regarding installed carpet and consumers it is obvious to one of ordinary skill in the art at the time the invention was made that a database containing the type of carpet, installation date, useful lifetime of the carpet, and consumer identification would have been necessary in order for Interface to purchase, maintain, replace the carpet over the period of the lease, and recycle it at the end of its useful life. (Page 30, Column 2, lines 39 – 43) One would have been motivated to do this in order to provide the leasing customer with the services that have been promised.
- d. Additionally Fishbein does not explicitly disclose estimating the useful lifetime of the installed carpet, contacting the consumer, or collecting the carpet within a determined period of time from the end of the estimated useful lifetime of the carpet. However, this would have been inherently necessary in order to replace and recycle the carpet at the end of life when the carpet is provided on a leasing arrangement. (Page 30, Column 2, lines 39 – 43)
- e. Fishbein discloses sorting the collected carpet according to polymeric fiber type. (Page 27, Column 2, lines 1 – 17, and Page 28, Column 1, lines 27 – 39)

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- f. Fishbein discloses depolymerizing the polymeric fibers into their monomeric components. (Post consumer commercial carpet made from the company's nylon 6 fiber is produced)(Page 28, Column 2, lines 13 – 27)
- g. Fishbein discloses repolymerizing the monomeric components to form a recovered polymer composition. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)
- h. Fishbein discloses forming fibers from the recovered polymer composition, and then forming the fibers into a carpet. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Claim 18: Fishbein discloses the method of claim 17 wherein the polymeric fibers comprise at least one nylon. (Post consumer commercial carpet made from the company's nylon 6 fiber is produced)(Page 28, Column 2, lines 13 – 27)

Claim 19: Fishbein discloses the method of claim 17 further comprising providing the consumer with an incentive to replace the carpet. (The disclosure that "Most of the voluntary take-back programs are not free" indicates that there are a couple of these programs that are free. Since the standard procedure is to charge a customer for the disposal of carpet in a landfill, offering such a take-back service that is free is an economic incentive to the customer) (Page 35, Column 1, lines 33 – 46)

Claim 20: Fishbein discloses the method of claim 17 further comprising providing the consumer with a replacement carpet. (Page 30, Column 2, lines 39 – 43)

Claim 23: Fishbein discloses a method for recovering carpet comprising nylon polymeric fibers.

- a. Selling carpet to a consumer. (Page 31, Paragraph 1) (Fishbein discloses that under a capital lease ownership of the carpet is transferred to the lessee which means a sale of the item has taken place. Fishbein also discloses in the cited section that Interface provides this type of lease.). While Fishbein is silent with regard to installing the carpet at the consumer's location it does disclose purchasing, leasing and maintaining the carpet. It would have been obvious to one of ordinary skill in the art at the time of the invention that the step of installing the carpet is an integral step in the leasing process. Furthermore it would have been obvious to one of ordinary skill in the art at the time of the invention that the carpet would have to be installed in order to perform the step of maintaining the carpet (Page 28, Column 2, lines 13 – 27). One would have been motivated to perform the installation step in order to entice customers to participate in the leasing arrangement.
- b. While Fishbein does not explicitly disclose that a database is established and maintained that contains information regarding installed carpet and consumers it is obvious to one of ordinary skill in the art at the time the invention was made

that a database containing the type of carpet, installation date, useful lifetime of the carpet, and consumer identification would have been necessary in order for Interface to purchase, maintain, replace the carpet over the period of the lease, and recycle it at the end of its useful life. (Page 30, Column 2, lines 39 – 43) One would have been motivated to do this in order to provide the leasing customer with the services that have been promised.

- c. Additionally Fishbein does not explicitly disclose estimating the useful lifetime of the installed carpet, contacting the consumer, or collecting the carpet within a determined period of time from the end of the estimated useful lifetime of the carpet. However, this would have been inherently necessary in order to replace and recycle the carpet at the end of life when the carpet is provided on a leasing arrangement. (Page 30, Column 2, lines 39 – 43)
- d. Fishbein discloses sorting the collected carpet according to polymeric fiber type. (Page 27, Column 2, lines 1 – 17, and Page 28, Column 1, lines 27 – 39)
- e. Fishbein discloses depolymerizing at least one type of nylon polymeric fiber into its monomeric components. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)
- f. Fishbein discloses repolymerizing the monomeric components to form a recovered polymer composition. (Post consumer commercial carpet made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)
- g. Fishbein discloses forming nylon fibers from the recovered polymer composition, and then forming the fibers into a carpet. (Post consumer commercial carpet

made from the company's nylon 6 fibers is produced)(Page 28, Column 2, lines 13 – 27)

Claim 24: Fishbein discloses the method of claim 23 wherein the nylon polymeric fibers comprises nylon 6. (Page 28, Column 2, lines 13 – 27)

Claim 26: Fishbein discloses the method of claim 23 further comprising the step after the contacting step of providing the consumer with a replacement carpet. (Page 30, Column 2, lines 39 – 43)

Claim 28: Fishbein discloses the method of claim 23 further comprising providing the consumer with an incentive to replace the carpet. (The disclosure that "Most of the voluntary take-back programs are not free" indicates that there are a couple of these programs that are free. Since the standard procedure is to charge a customer for the disposal of carpet in a landfill, offering such a take-back service that is free is an economic incentive to the customer) (Page 35, Column 1, lines 33 – 46)

Response to Arguments

5. Applicant's arguments filed May 7, 2007, have been fully considered but they are not persuasive.
 - a. The applicant argues that the Fishbein reference does not disclose "selling the carpet to a customer because the Uniform Commercial Code defines lease to

mean "a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease" and a sale is defined as "the passing of title from the seller to the buyer for a price". While the examiner has not received a copy of the identified sections of the Uniform Commercial Code the applicant is using to rebut the examiners position, it is clear that the "capital lease" disclosed in Fishbein does not meet the definition of a lease as proposed by the applicant. The definition of lease submitted by the applicant indicated a transfer of the "right to possession and use" of goods, while the capital lease of Fishbein transfers the possession (ownership) of the goods. The "capital lease" in the Fishbein reference does, however, satisfy the definition of "sale" since the ownership (title) is transferred to the buyer.

- b. The applicant argues that a capital lease is commonly known as a finance lease and as such no sale occurs. A capital lease can actually be classified as either a sales-type lease or a finance lease, according to Kieso and Weygandt ("Intermediate Accounting", Fifth Edition revised, pages 978, 979, and the figure on page 979). The distinction between the two is whether a transaction involves a profit or loss at the inception of the lease. Typically the profit or loss involves a manufacturer or dealer, however, a lessor need not be a manufacturer or dealer to recognize a profit or loss at the inception of a lease that requires application of sales-type leasing. If the capital lease disclosed by Fishbein stratifies a sales-

type lease then it is clear a sale has occurred. Therefore, the question remains, does a sale occur for the manufacturer or dealer in the capital lease disclosed by Fishbein if it only satisfies the criteria as a "finance lease". Clearly, a sale to the customer is taking place. In the finance lease arrangement the customer obtains financing from the outside entity. The funds are then used to purchase the carpet from the manufacturer or dealer as a sale. The remaining obligation, to fulfill the terms of the finance lease is between the outside entity and the customer. Therefore, the manufacturer or dealer has sold the carpet to the customer and the limitations of the claims have been satisfied.

- c. The applicant argues that Fishbein does not disclose that the carpet is installed at the consumer location. However, the examiner has acknowledged that Fishbein does not specifically recite installing the carpet, however Fishbein does disclose maintaining the carpet (Page 28, Col 2, lines 13-27). Hence it would be obvious that the carpet was installed in order for it to be maintained.
- d. The applicant argues that if Fishbein does disclose selling and installing the carpet, the fact that the transaction is a sale would negate the motivation utilized to arrive at the claimed combination involving the remaining steps of the claims. However, the fact that the lease transaction qualifies as a sale does not negate the fact that leasing terms are no longer valid. The Fishbein reference discloses on page 31, Col 1, lines 23-27 that the Evergreen "provides capital leases for carpet through an outside leasing company, Dodd Pacific, and offers a take back". The motivation states that "One would have been motivated to perform

the installation step in order to entice customers to participate in the leasing arrangement." Therefore, the disclosed estimating the useful life step is required in order to determine the leasing arrangement, the maintaining a database step is still required in order to maintain the carpet and perform the collecting ("take back") and recycling at the end of the useful life. These steps would still qualify as enticements for the customer to participate in the leasing arrangement.

- e. The applicant states on page 10, paragraph 5, that the Office Action dated April 30, 2007 conceded that the Fishbein reference does not disclose any of the steps consisting of the group: establishing and maintaining a database, estimating a useful life of the carpet; installing the carpet, contacting the customer, or collecting the carpet. However, this is a mischaracterization of the Office Action. The collecting of the carpet is specifically recited in the Fishbein reference. The steps of estimating a useful life and contacting the customer are disclosed as being inherent and, therefore, are also disclosed by Fishbein. Only the remaining steps in said group have been addressed utilizing obviousness.

Conclusion

- 6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory

action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Van Bramer whose telephone number is (571) 272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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